IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO. 134 OF 2006

UNION OF INDIA through
Dy. Chief Engineer
(Cons.) Central Railway .Petitioners
vs.
M/s. Sree Sai Enterprises ....Respondents.

Mr. T.J. Pandian, advocate for the petitioners.
None for the respondents.

CORAM: S.J. VAZIFDAR, J.

DATE : 6TH JUNE, 2006.

P.C. :

1. This is a petition under section 34 of the Arbitration and Conciliation Act, 1996 challenging the award dated 9.12.2005. The

challenge is to the grant of interest.

2. Mr. Pandian relied upon Clause 16(2) of the General Conditions of Contract which reads as under :

> "16(2) No interest will be payable upon the earnest money or the security deposit or amounts payable to the Contractor under the contract, but Government Securities deposited in terms of Sub-Clause (1) of this clause will be repayable with interest accrued thereon. "

3. Mr. Pandian submitted that in view of Clause 16(2) the arbitrator did not have jurisdiction to grant interest. Mr. Pandian, however, very fairly and correctly invited my attention to two judgments of the learned Single Judge in Arbitration Petition No. 42 of 2004 and Arbitration Petition No. 274 of 2005 dated 4.5.2006 and 6.12.2005 respectively which cover the matter against this submission. He submitted that the petitioner herein has filed appeals against the judgments. However I am bound by the said judgments. The remedy of the

petitioner is to carry this order in appeal. The petition is therefore liable to be dismissed in view of the aforesaid judgments.

4. Even assuming that the learned Arbitrator did not consider Clause 16(2) it would not carry the petitioners case any further in view of the aforesaid judgments. The Arbitrator would have been bound by the said judgments.

5. In the circumstances the petition is dismissed.

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